



SATRA CONCENTRATES, INC.

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MEMBER OF THE SATRA GROUP

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August 2, 1989

EPA Region 5 Records Ctr.



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Mr. Michael Moschell, Inspector
Division of Solid and Hazardous Waste Management
Ohio Environmental Protection Agency
2195 Front Street
Logan, Ohio 43138-9031

RE: Your Letter of June 19, 1989; Jefferson County
Sattralloy/Satra Concentrates, RCRA Correspondence File

Dear Mr. Moschell:

Thank you again for allowing us additional time to respond to your letter of June 19, 1989.

Your letter cites a number of regulations concerning hazardous wastes that have, in your estimation, been violated in the course of present operations. Your letter raises a number of issues. The purpose of this letter is not to discuss each such issue but, rather, to focus on the basis of your letter. In our view, your appraisal of the situation is based upon your statement that "K091 is presently listed as a hazardous waste," your unstated assumption that any such listing is effective in Ohio, and the application of any such listing to this facility's materials.

This is not the case. First, no regulation listing K090 and K091 affects any facility in Ohio. Secondly, even if the regulations were amended to affect facilities in Ohio, no such regulation will affect the materials at Sattralloy's and Satra Concentrates' facilities in Jefferson County. Permit me to elaborate.

First, as to the point that no regulation that lists K090 and K091 affects any facility in Ohio, your letter refers to the federal listing of K090 and K091 in September, 1988. The Federal Register notice on the listing specifically stated that the listing was being made pursuant to the authorities granted U.S. EPA by the Resource Conservation and Recovery Act (RCRA) and not the Hazardous and Solid Waste Amendments of 1984 (HSWA). 53 Fed. Reg. 35412, 35417, col. 2 (Sept. 13, 1988). The effect of this is, as the notice states, that the "final listings are not effective in authorized States..." Id.

As you are aware, the State of Ohio has received final authorization to "operate its program in lieu of the Federal Program" for hazardous waste management. 54 Fed. Reg. 27170 (June 28, 1989). See also 40 CFR 271.3 (b) (1988). The June 28, 1989, regulation amends Subpart KK of 40 CFR Part 272 and lists all of the Ohio regulations that are incorporated by reference and codified as part of the RCRA program. None of the Ohio regulations so enumerated lists K090 and K091 as hazardous waste. Indeed, under Ohio law, the equivalent of the Bevill Amendment exemption, remains in effect. OAC Rule

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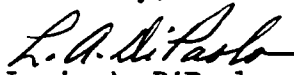
3745-51-04(B)(7). Thus, in Ohio K090 and K091 are not listed as hazardous wastes and, indeed, are exempt from regulation as hazardous wastes.

The second point is that, even if the Ohio regulations were amended to eliminate the exemption or to list K090 and K091 as hazardous wastes, such a regulation would not apply to any materials at Satralloy's and Satra Concentrates' facilities. The listing of a material as a hazardous waste affects only newly-generated materials. In any event, the listing does not affect materials that were deposited, as these were, more than six years prior to the listing. This has been the consistent interpretation by U.S. EPA of RCRA. See e.g., 54 Fed. Reg. 15316, 15338 (Apr. 17, 1989).

Finally, your letter requested an evaluation of certain materials to determine whether or not they are hazardous wastes. I am presently evaluating the materials in drums and will convey the results to you when I have received them.

Should you have any questions concerning the issues raised by this letter, please do not hesitate to contact me. We look forward to working with you toward an amicable resolution of your letter of June 19, 1989.

Sincerely,


Louis A. DiPaolo

cc: J. Thunder, SS&D